



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/608,223 | 06/30/2003 | Leslie R. Sherrill | 003544.00010 | 1776 |

22907 7590 12/17/2003

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

| |
|----------|
| EXAMINER |
|----------|

NELSON, JUDITH A

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3644

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/608,223

Applicant(s)

SHERRILL ET AL.

Examiner

Judith A. Nelson

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 06/30/2003 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,223,693, issued to Perlberg et al, as disclosed on Applicants' PTO Form 1449.

Concerning claim 1, Perlberg et al disclose an animal chew comprising:

a composite of animal hide bits, which include small pieces of rawhide (note col. 3, lines 53-56) and discrete pieces of flavor product interspersed in the composite (as noted in col. 4, lines 51-57).

Regarding claims 8 and 9, Perlberg et al also teach an animal chew enclosed within a solidified cylindrically shaped (as seen in fig. 4), animal hide granulate paste (col. 3, lines 54-56; col. 4 lines 51-60). Here it is understood that grinding the animal hide and mixing it with water, glycerin, and gelatin produces an animal hide granulate paste, and it is further understood that the final rawhide article is a solidified product.

Art Unit: 3644

With respect to claim 10, Perlberg et al further teach the animal chew, comprising a by weight of about 50-95% rawhide bits and about 5-50% gelatin/binder (as noted in claim 30 of the reference).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,223,693, issued to Perlberg et al, as disclosed on Applicants' PTO Form 1449, in view of U.S. Patent 6,277,420, issued to Anderson et al, as also listed on Applicants' PTO Form 1449.

In reference to claims 2-7, Perlberg et al discloses the claimed invention including the pet chew comprising a gelatin 15%, by weight (see col. 4, lines 51-53 and claims 30 and 39 referencing the percentage of binder used) and further comprising a health affecting additive (see col. 3, lines 28-32), the reference fails however to specifically teach: (re: claim 2) the flavor product being a meat product; (re: claim 3) wherein the meat product is in the form of chunks; (re: claim 5) having gelatin content of about 15% by weight; (re: claim 6) the flavor is dried meat; or (re: claim 7) wherein the flavor product is jerky.

Anderson et al teach the use of a pet chew comprising jerky (dried meat slices /chunks) as a flavor member in the chew (col. 1, lines 30-39).

Anderson et al states that jerky can be highly palatable and can provide a reasonable chew life. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pet chew toy as taught by Perlberg et al, by incorporating jerky as taught by Anderson et al, since Anderson et al teach that such a modification would provide a more palatable chew toy.

Pertaining to claims 12-15, Perlberg et al teach an animal chew including an outer portion including a plurality of bound animal hide bits (col. 4, lines 51-57); adherent (glycerin); a nutritive health affecting additive (see col. 3, lines 28-32); and, an elongate member at least partially contained within the outer portion (figure 4). Perlberg et al does not disclose that the elongate member is a jerky member; nor does the reference teach the average of jerky pieces used in a chew toy being one to thirty times the average size of the animal hide bits.

Anderson et al teach an elongate jerky member at least partially enclosed in an animal chew body. (see discussion above).

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have included an elongate jerky member, as taught by Anderson et al., in the animal chew disclosed by Perlberg et al, because Anderson et al teach that the "jerky is palatable and has a good chew life". Specifically addressing the subject matter of Applicants' claim 14, it would have been further obvious to a skilled

Art Unit: 3644

artisan to have, made use of jerky pieces and hide bits of whichever sizes suitable and functional for the device.

In reference to claims 16-19, Perlberg et al discloses a method of making an animal chew including providing animal hide bits (col. 4, lines 55-56); mixing adherent (col. 4, line 52, where a binder is understood to be an adherent) with the animal hide bits to form a paste (col. 4, line 56), where the mixture is understood to be a paste), providing an elongate member (col. 5, lines 40-41); encasing the elongate member in the paste (col. 5, lines 39-41); and lastly the reference teaches heating the paste (col. 3, lines 63-65). Although Perlberg et al, discloses that flavors may be added to the animal chew (col. 2, lines 24-26), the reference does not specifically disclose that the elongate member is a flavor member; nor does the reference teach heating the flavor member.

Anderson et al teach the step of providing an elongate flavor member for an animal chew (col. 7, lines 56-59) and heating an elongate flavor member, in order to cook it (col. 8, lines 25-27). Anderson et al. teach that this flavor member makes the chew more easily accepted by dogs (col. 8, lines 41-45). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an elongate flavor member, as taught by Anderson et al., in the animal chew disclosed by Perlberg et al., in order to make the chew more attractive to dogs; and further incorporate the step of heating the flavor member, as taught by Anderson et al, in the method steps of making a chew as taught by Perlberg et al, in order to cook the flavor member while drying the paste.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,223,693, issued to Perlberg et al, as disclosed on Applicants' PTO Form 1449 and applied to claims 8 and 10 above, and further, in view of U.S. Patent 5,456,933, issued to Lee, and also listed on Applicants' PTO Form 1449.

Perlberg et al disclose glycerin being used in the chew toy of a by weight of between about 0-10 % (noted in claim 39), however the reference fails to teach the chew comprising a by weight of between about 5-10% wheat germ and 5-10 % by weight of fat.

Lee teaches an animal food piece including about 0-9% fat by weight (col. 6, lines 6-9) for the purpose of lubricating the material flow through an extrusion operation (col. 6, lines 18-22). Lee also teaches the use of wheat germ in animal food (table 1) as a source of protein (col. 4, lines 16-19). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to include fat and wheat germ, as taught by Lee, in the paste disclosed by Perlberg et al. as modified, in order to provided protein and lubrication.

Although Lee does not specifically teach the use of about 5-10% fat by weight and about 5-10% wheat germ by weight, it would have further been obvious to a skilled artisan to have chosen the claimed weight ratios of the components, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,595,142 and US PG Pub 2002/0185085 A1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judith A. Nelson whose telephone number is (703) 305-0984. The examiner can normally be reached on M-Thur. 9:00 a.m. - 6:30 p.m., alt. Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 306-4180.

Judith A. Nelson
Examiner
Art Unit 3644

jan 
12/11/03